

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:04-CR-00122-F

No. 7:11-CV-00058-F

KENNETH RAY JACOBS,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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ORDER

Having conducted an examination of petitioner's motion [DE-40] pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, and it appearing that dismissal is not warranted at this time, the United States Attorney is DIRECTED to file an Answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the above-captioned § 2255 Motion to Vacate, Set Aside or Correct Sentence, within **forty (40)** days of the filing of this order.

Additionally, because petitioner asserts challenges to his conviction based on the recent decision of United States v. Simmons, 649 F.3d 237 (4<sup>th</sup> Cir. 2011), pursuant to Standing Order No.11-SO-3 (E.D.N.C. Oct. 18, 2011), the Office of the Federal Public Defender is appointed to represent petitioner in connection with these proceedings. The Clerk is DIRECTED to serve the Office of the Federal Public Defender with a copy of this order.

SO ORDERED.

This, the 28<sup>th</sup> day of October, 2011.

  
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JAMES C. FOX  
Senior United States District Judge